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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: John Rebhorn et al. Examiner: Robert A. Madsen  
Serial No.: 09/781,582 Group Art Unit: 1761  
Filed: February 12, 2001 Docket No.: 5515USA (G180.137.101)  
Title: PORTABLE, SIDE-BY-SIDE COMPARTMENT CONTAINER AND  
METHOD FOR SEPARATELY STORING AND DISPENSING TWO  
CONSUMABLE PRODUCTS, ESPECIALLY CEREAL AND MILK

**APPEAL BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES OF**  
**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Mail Stop Appeal Brief – Patents  
The Honorable Commissioner of Patents and Trademarks  
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Dear Sir or Madam:

**Appellant's Brief on Appeal**

This Brief is presented in support of the Notice of Appeal filed on February 26, 2003 from the final rejection dated November 6, 2002 rejecting claims 1-51 of the above-identified application. Fifty-one claims remain for consideration.

The Appeal Brief is filed in triplicate and accompanied by the requisite fee set forth in 37 C.F.R. §1.17(c). Appellant respectfully requests reversal of the Examiner's rejections of pending claims 1-51.

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**Appeal Brief**

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**Real Party In Interest**

The present application has been assigned to General Mills, Inc., a Delaware corporation, doing business at Number 1 General Mills Boulevard, Minneapolis, Minnesota 55440.

**Related Appeals and Interferences**

There are no other appeals or interferences known to the Appellant which will have a bearing on the Board's decision in the present appeal.

**Status of the Claims**

Claims 1-51 are pending in the application.<sup>1</sup> Claims 1-51 were rejected and the rejection made final in the Office Action date November 6, 2002 and are the subject of the present Appeal.

**Status of Amendments**

Appellant filed an Amendment After Final on January 6, 2003 canceling claim 27 and amending claims 22 and 35.<sup>2</sup> An Advisory Action was issued on January 29, 2003 indicating that the Amendment After Final was not entered by the Examiner. Pursuant to 37 C.F.R. §1.191, Appellant filed a Notice of Appeal on February 26, 2003.

**Summary of the Invention**

The present invention as claimed in independent claims 1 and 19 provides for a portable, single-use container or packaged good article for separately containing a first and a second consumable product. *See Figures 1 and 6 and corresponding text in the Specification.* The container includes a first compartment tapering at an upper portion thereof to form a spout. *See, e.g., Figure 2; page 6, lines 10-16; page 7, line 14 through page 8, line 5.* The container further

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<sup>1</sup> A copy of pending claims 1-51 is included in Appendix A.

<sup>2</sup> The amendments submitted January 6, 2003 incorporated the language of claim 27, which was concurrently cancelled, into claims 22 and 35. Therefore, no new matter was added in the proposed amendments. However, the Appellant does not believe the amendments are necessary to secure patentability. As such, this appeal is based on the pending claims and does not require the amendments of January 6, 2003 to be entered.

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includes a second compartment tapering at upper portion thereof to form a mouth. *See, e.g., Figure 2; page 9, lines 12-15 page 10, line 11 through page 11, line 4.* The first compartment contains or is adapted to contain the first consumable product, and the second compartment contains or is adapted to contain the second consumable product. *See, e.g., Figure 6; page 15, lines 24-28.* The first and second compartments are assembled to one another in a side-by-side fashion such that the mouth abuts the spout. *See, e.g., Figure 5A through Figure 6; page 9, lines 7-21; page 13, lines 4-25.* With respect to claim 1, the spout and mouth each define an internal surface, and the spout and mouth are positioned such that each of the respective internal surfaces define an interior section and an exterior section, and the exterior section of the spout internal surface has a radius differing from the radius of the exterior section of the mouth internal surface. *See, e.g., Figures 5B and 5C; page 13, lines 3-15; page 13, line 32 through page 14, line 16.* With respect to claim 19, the spout has a curved, convex interior wall, and the mouth has a curved, concave interior wall. *See, e.g., Figures 5A-5C; page 7, line 25 through page 8, line 2 page 10, line 22-29.*

The invention as claimed in independent claim 22 provides a portable, single-use container for separately containing a first and second consumable product. *See Figures 1 and 6 and corresponding text in the specification.* The container includes a first compartment for containing a first consumable product, and a second compartment for containing a second consumable product. *See, e.g., Figure 6; page 5, lines 24-32.* The first and second compartments are secured to one another in a side-by-side fashion and combined to define a body of the container. *See, e.g., Figure 5; page 5 lines 24-26; page 12, lines 7-19.* The container further includes a first compartment opening for dispensing a first consumable product from the first compartment and having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment. *See, e.g., Figure 3; page 7, lines 14-24; comparison of page 8, lines 22-28 and page 8, line 31 through page 9, line 2.* The container further includes a second compartment opening for dispensing a second consumable product from the second compartment and including a transverse concave section. *See, e.g., Figure 4; page 10, lines 12-29.* The transverse cross-sectional of the second compartment opening is a less

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than a maximum transverse cross-sectional area of the second compartment. *See, e.g., Figure 4; page 10, lines 26-29; page 10, lines 12-21; comparison of page 11, lines 24-28 and page 11, line 32 through page 12, line 4.* The transverse cross-sectional area of the second compartment opening also is greater than the transverse cross-sectional area of the first compartment opening. *See, e.g., Figure 5B-5C; page 13, line 32 through page 14, line 16.* In addition, at least one of the first and second compartment openings is substantially centered relative to the body. *See, e.g., Figures 5B-5C; and page 15, lines 20-23.*

The invention as claimed in independent claim 35 provides for a portable, single-use packaged good article having similar limitations as described with respect to independent claim 22. *See Figures 1 and 6 and corresponding text in the specification.* The container includes a first compartment, a first consumable product contained within the first compartment, a second compartment, and a second consumable product contained within the second compartment. *See, e.g., Figure 6; page 5, lines 24-32.* The first and second compartments are secured to one another in a side-by-side fashion and combine to define a container body. *See, e.g., Figure 5; page 5 lines 24-26; page 12, lines 7-19.* The container further includes a first compartment opening for dispensing the first consumable product from the first compartment and having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment. *See, e.g., Figure 3; page 7, lines 14-24; comparison of page 8, lines 22-28 and page 8, line 31 through page 9, line 2.* The container further includes a second compartment opening for dispensing the second consumable product from the second compartment and having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the second compartment. *See, e.g., Figure 4; page 10, lines 26-29; page 10, lines 12-21; comparison of page 11, lines 24-28 and page 11, line 32 through page 12, line 4.* The transverse cross-sectional area of the second compartment opening is at least three times greater than the transverse cross-sectional area of the first compartment opening. *See, e.g., Figure 1, 2, 5B-5C; page 13, line 32 through page 14, line 16.* In addition, at least one of the first and second compartment openings is substantially centered relative to the body. *See, e.g., Figures 5B-5C; and page 15, lines 20-23.*

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As claimed in independent claim 38, a method of manufacturing a portable, single-use container separately containing two consumable products includes providing a first compartment forming a spout and a second compartment forming a mouth, dispensing a first consumable product into the first compartment, covering the spout separate of the mouth with a seal, and dispensing a second consumable product into the second compartment. *See, e.g., Figures 2-6, page 5, lines 20-26 and line 28 through page 6, line 9; page 6, lines 10-11; page 9, lines 7-9; page 14, lines 21-24; page 16, lines 5-9 and lines 11-12.* The method of claim 38 also includes assembling the first and second compartments to one another and covering the mouth and seal with a cover. *See, e.g., Figures 5A-5C, page 16, lines 28-29; page 16, line 32 through page 17, line 2; page 14, line 17-18.* Upon final assembly of the container, the mouth abuts the spout. *See, e.g., Figures 5A-5C; page 13, lines 3-5.*

**Issues Presented for Review**

- I. Whether claims 1-9, 16, 47, and 48 are unpatentable under 35 U.S.C. §102(b) in view of Davis, U.S. Patent No. 2,826,338.
- II. Whether claims 1, 4-9, 13, 16, and 48 are unpatentable under 35 U.S.C. §102(b) in view of Stegath, U.S. Patent No. 1,363,064.
- III. Whether claims 1-5, 7-12, 16, 17, 47, and 48 are unpatentable under 35 U.S.C. §102(b) in view of Jaarsma, U.S. Patent No. 4,277,000.
- IV. Whether claims 1-12, 16-19, 47, and 48 are unpatentable under 35 U.S.C. §102(b) in view of Ness, U.S. Patent No. 5,588,561 or Ness, U.S. Patent No. 5,753,289.
- V. Whether claims 38-40, 42, and 46 are unpatentable under 35 U.S.C. §102(b) in view of Ness, U.S. Patent No. 5,588,561 or Ness, U.S. Patent No. 5,753,289.
- VI. Whether claims 38 and 44-46 are unpatentable under 35 U.S.C. §102(b) in view of Simmons, U.S. Patent No. 4,148,417, as evident by Binter, U.S. Patent No. 5,735,422.
- VII. Whether claim 14 is unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Simmons, U.S. Patent No. 4,148,417.

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- VIII. Whether claim 15 is unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Newarski, U.S. Patent No. 5,727,679.
- IX. Whether claims 19-21 and 49 are unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Ward, U.S. Patent No. 2,026,449, and Smith, U.S. Patent No. 2,170,311.
- X. Whether claims 22-28 and 32-34 are unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Ward, U.S. Patent No. 2,026,449, and Smith, U.S. Patent No. 2,170,311.
- XI. Whether claim 29 is unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Ward, U.S. Patent No. 2,026,449, Smith, U.S. Patent No. 2,170,311, and Stegath, U.S. Patent No. 1,363,064.
- XII. Whether claim 30 is unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Ward, U.S. Patent No. 2,026,449, Smith, U.S. Patent No. 2,170,311, and Simmons, U.S. Patent No. 4,148,417.
- XIII. Whether claim 31 is unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Ward, U.S. Patent No. 2,026,449 Smith, U.S. Patent No. 2,170,311, and Newarski, U.S. Patent No. 5,727,679.
- XIV. Whether claims 35-37, 50, and 51 are unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289.
- XV. Whether claims 41 and 43 are unpatentable under 35 U.S.C. §103(a) over Ness, U.S. Patent No. 5,753,289, in view of Newarski, U.S. Patent No. 5,727,679.

**Grouping of the Claims**

- I. Claims 1-18 and 48 shall stand or fall with the patentability of claim 1 in this Appeal.
- II. Claim 47 is separately patentable.
- III. Claims 19-21 and 49 shall stand or fall with the patentability of claim 19 in this Appeal.

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- IV. Claims 22-26 and 30-34 shall stand or fall with the patentability of claim 22 in this Appeal.
- V. Claim 27 is separately patentable and claims 28 and 29 shall stand or fall with the patentability of claim 27 in this Appeal.
- VI. Claims 35-37, 50, and 51 stand or fall with the patentability of claim 35 in this Appeal.
- VII. Claims 38-40, 42, and 44-46 shall stand or fall with the patentability of claim 38 in this Appeal.
- VIII. Claims 41 and 43 are separately patentable.

**Argument**

**Rejections under 35 U.S.C. §102**

In the Final Office Action, claims 1-9, 16, 47, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Davis, U.S. Patent No. 2,826,338 (“the ‘338 Patent”). Claims 1, 4-9, 13, 16, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Stegath, U.S. Patent No. 1,363,064 (“the ‘064 Patent”). Claims 1-5, 7-12, 16, 17, 47, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Jaarsma, U.S. Patent No. 4,277,000 (“the ‘000 Patent”). Claims 1-12, 16, 17, 19, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Ness, U.S. Patent No. 5,588,561 (“the ‘561 Patent”). Claims 1-9, 16-18, 47, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Ness, U.S. Patent No. 5,753,289 (“the ‘289 Patent”). Claims 38-40, 42, and 46 were rejected under 35 U.S.C. §102(b) as being anticipated by the ‘289 Patent. Claims 38 and 44-46 were rejected under 35 U.S.C. §102(b) as being anticipated by Simmons, U.S. Patent No. 4,148,417 (“the ‘417 Patent”), as evident by Binter, U.S. Patent No. 5,735,422 (“the ‘422 Patent”). These rejections are respectfully traversed for the reasons as follows.

**A. The Applicable Law**

“A claim is anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single, prior art reference.” *Verdegaal Bros. v. Union Oil*



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*Co., of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

**B. Rejection of Claims 1-9, 16, 47 and 48 in View of the ‘338 Patent**

Independent claim 1 is not anticipated by the ‘338 Patent. The ‘338 Patent provides a receptacle having a plurality of fluid tight chambers 16 and 17, each of which can be accessed via pouring spout 14 and 15, respectively. Notably, the spouts 14 and 15 are spaced apart from each other on the top 12 of the receptacle to allow access to the goods within each chamber individually on an as-needed bases (as for goods such as automobile cleaner and automobile polish). *See the ‘338 Patent, Figures 1-3; column 2, lines 60-66.* As such, the ‘338 Patent fails to teach or otherwise suggest a container in which “the mouth abuts the spout” (emphasis added), as recited in independent claim 1. Consequently, for at least the above-described reasons, the ‘338 Patent fails to disclose the limitations and, therefore, fails to anticipate the container of independent claim 1. For at least the same patentably distinct reasons, dependent claims 2-9, 16, 47 and 48 are also believed to be allowable over the ‘338 Patent.

**C. Rejection of Claims 1, 4-9, 13, 16 and 48 in View of the ‘064 Patent**

Independent claim 1 is not anticipated by the ‘064 Patent. The ‘064 Patent relates to a “duplex tube which may hold two preparations, so that both preparations may be always found together.” *See the ‘064 Patent, column 1, lines 20-23.* The tube of the ‘064 Patent provides for individual access of the two preparations, such as lotion and shaving cream, and consequently, provides for two discharge openings being spaced from one another to allow for individual and successive access of each of the preparations. *See the ‘064 Patent, column 1, lines 15-19.* In fact, mixing of the two preparations would be undesirable as it may cause contamination. *See the ‘064 Patent, column 1, lines 24-28.* Moreover, in each of the embodiments illustrated in Figures 1-8 of the ‘064 Patent, the two openings are clearly spaced apart from each other and, as such, do not abut as required by the limitations of independent claim 1. Notably, Figure 9 of the ‘064 Patent is a cross-section of Figure 7 that does not depict the opening arrangement. As a result, the ‘064 Patent fails to disclose the positioning of the compartments of the container “such

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that the mouth abuts the spout” as recited in claim 1. Accordingly, the ‘064 Patent does not anticipate the container of independent claim 1. For at least the same patentably distinct reasons, dependent claims 4-9, 13, 16, and 48 are also believed to be allowable over the ‘064 Patent.

**D. Rejection of Claims 1-5, 7-12, 16, 17, 47 and 48 in View of the ‘000 Patent**

Independent claim 1 is not anticipated by the ‘000 Patent. The ‘000 Patent provides a multi-compartment container with an individual outlet port for each compartment within the container. *See the ‘000 Patent, column 1, lines 6-10.* The ‘000 Patent fails to disclose a first and second compartment, each of which “tapers an upper portion thereof to form” a spout or mouth, respectively, as recited in independent claim 1. “Taper” is defined to mean “to become gradually narrower or thinner towards one end.” *American Heritage Dictionary of The English Language*, p. 1835 (1992). Conversely, despite the small beveled edge 28, the compartment 30 of the ‘000 Patent actually becomes gradually larger toward the upper portion of the compartment 30 due to the positioning of the divider wall 20 within the container 10. *See Figures 2 and 5.* A similar analysis can be made for compartment 30A of the ‘000 Patent with regard to divider wall 20A. *See Figure 7.*

Furthermore, the ‘000 Patent provides a multi-compartment container 10 “formed of thermal plastic material by an injection molding process such that the walls 18, 20 are of integral one-piece construction.” *See the ‘000 Patent, column 2, lines 45-47.* Therefore, due to the one-piece construction of the walls 18 and 20, the compartments 30 and 32 are also formed as one integral piece. As such, the ‘000 Patent does not disclose first and second compartments “assembled to one another,” as a single piece cannot be assembled to itself. As a result, the ‘000 Patent fails to disclose or describe the limitations of independent claim 1 and, therefore, does not anticipate the container of independent claim 1. For similar patentably distinct reasons, dependent claims 2-5, 7-12, 16, 17, 47, and 48 are also believed to be allowable over the ‘000 Patent.

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**E. Rejection of Claims 1-12, 16-19, 47, and 48 in View of the ‘561 and  
‘289 Patents**

Independent claim 1 is not anticipated by the ‘561 Patent or the ‘289 Patent. Notably, the ‘561 Patent and the ‘289 Patent share the same inventor and have identical specifications and, therefore, will be collectively referred to as “the Ness Patents.” The Ness Patents disclose a dual compartment container adapted to hold dry and liquid foods. The Ness Patents provide for a container 10 with a cup 12, which defines a dry food compartment 16 and a liquid food compartment 18, and a lid 14 with a protruding opening 13 to regulate product flow from the cup 12. As such, neither compartment 16 nor compartment 18 of the Ness Patents “tapers at an upper portion thereof to form a spout” (emphasis added) as required by independent claim 1. Rather, compartments 16 and 18 of the Ness Patents terminate in an opening configured to receive a lid 14 which contains a protruding opening 13 or spout 96. Accordingly, the Ness Patents require a separate lid to close off the compartments 16 and 18 and to regulate flow of goods from the compartments 16 and 18. Without a separate lid 14, a user of the container disclosed by the Ness Patents attempting to dispense product from the cup 12 alone will experience great difficulties in achieving necessary control over product flow, primarily caused by the cup’s 12 lack of a dispensing spout or mouth. In addition, the protruding opening 13 is not tapered as it extends substantially straight up from the lid 14. *See the Ness Patents Figures 1, 2, and 8.*

If the upper openings of the compartment 16 and 18 of the Ness Patents are considered to be the mouth and the spout of claim 1, both openings have identical radii along their exterior sections as necessary to effectuate formation of a seal between lid 14 and cup 12 (especially in the preferred threaded embodiment of the Ness Patents). As recited in independent claim 1, the first compartment forms a spout defining a spout internal surface that forms a passage, and a second compartment includes a mouth defining a mouth internal surface that forms an opening. Upon final assembly of the two compartments, the internal surfaces of the spout and mouth are positioned to define an interior section and an exterior section. In this regard, the exterior section of the spout internal surface has a radius differing from a radius of the exterior section of the

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internal surface of the mouth. Examples of this configuration are provided in Figures 5B and 5C of the application in issue. While the interior sections associated with the compartment walls of the Ness Patents may or may not have differing radii, the exterior section clearly have identical radii.

Appendix B, which is an enlarged and notated version of Figure 3 of the Ness Patents, illustrates this concept. Referring to Appendix B and considering “A” as the mouth of compartment 16 and “B” as the spout of compartment 18, the interior surfaces of mouth “A” and spout “B” are the top surfaces inside the compartments 16 and 18. The internal surface of mouth “A” has an interior section “C”, which is part of the divider wall 17, and an exterior section “D,” which is opposite the cup surface having threads 24 that runs around the outer perimeter of compartment 18. The internal surface of spout “B” has an interior section (not shown) opposite interior section “C” on divider wall 17 and an exterior section “E,” which is opposite the cup surface having threads 24 that runs around the outer perimeter of compartment 16. Since a single lid 14 screws securely on the divided compartment cup around both compartments 16 and 18 via threads 24, *see, e.g., the ‘289 Patent, column 3, 24-29*, the threaded area of container 10 must form a circle and, therefore must maintain a constant radius. As noted above, exterior sections “D” and “E” are both defined by the same wall that forms the threads 24. Therefore, exterior sections “D” and “E” collectively form a circular internal perimeter surface and must have the same radius. As such, not only does the ‘289 Patent fail to disclose “the exterior section of the spout internal surface having a radius differing from a radius of the exterior section of the mouth internal surface,” (emphasis added) as required by claim 1, but it actually discloses the exterior sections of the spout and mouth “D” and “E” as having identical radii.

In light of the above, the Ness Patents fail to anticipate the container of independent claim 1. For the same patentably distinct reasons, claims 2-12, 16-19, 38-40, 42, and 46-48 are also believed to be allowable over the Ness Patents.

Claim 47 is further patentably distinct over the Ness Patents. As described with respect to independent claim 1, the radius of the external section of the spout internal surface is the same as the radius of the exterior section of the mouth internal surface. Therefore, “the radius of the

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exterior section of the spout internal surface is” not “less than the radius of the exterior section of the mouth internal surface” as recited in claim 47. As such, claim 47 presents additional matter that is not anticipated by the Ness Patents, therefore, further rendering claim 47 allowable.

**F. Rejection of Claims 38-40, 42, and 46 in View of the ‘561 Patent and the ‘289 Patent**

Claim 38 is not anticipated by the Ness Patents. As described with respect to claim 1, the Ness Patents fail to teach “providing a first compartment tapering at an upper portion thereof to form a spout,” as the compartment 16 and 18 form an opening sized to receive a lid 14, which in turn controls the product dispersion. As such, neither compartment 16 nor 18 of the Ness Patents form a spout as recited in claim 38. The Examiner referred to Figure 6 and column 5, lines 10-29 as teaching covering the spout separate from covering the mouth. However, this reference relates to a non-separable embodiment and, therefore, fails to disclose assembly of the first and second compartments to one another as required by the limitations of independent claim 38.

Furthermore, the Ness Patents fail to disclose “covering the mouth and seal with a cover” wherein a seal covers a spout separate of the mouth. The dual-compartment cup 12 of the Ness Patents is covered by a single lid or cover. When the two compartments 50 and 52 of the Ness Patents are individually stored with separate covers, upon reunion of the compartments 50 and 52, the lid is “placed thereover which keeps the containers together and allows dry and liquid food to be dispersed therefrom.” (Emphasis added). *See the ‘289 Patent column 4, lines 53-64.* In order for the lid to “allow dry and liquid food to be dispersed therefrom,” the separate covers must be removed before the single lid or cover is placed on the container, as otherwise the separate covers would prevent food from being dispensed. In addition, the consumer-applied separate covers taught by the Ness Patents are most likely threaded or snap-on covers. If such covers remained on the cup, the covers would surely frustrate the application of the lid to the cup, which also utilizes threading or snap-on attachment. As such, the Ness Patents do not disclose a cover that covers both the mouth and the sealed spout as required by independent claim 38. For at least these reasons, the Ness Patents fail to anticipate the method of claim 38. For the same patentably distinct reasons, claims 39, 40, 42, and 46 are also believed to be

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allowable over the Ness Patents.

**G. Rejection of Claims 38 and 44-46 in View of the '417 Patent as Evidenced by the '422 Patent**

Claims 38 and 44-46 are not anticipated by the '417 Patent. The '417 Patent provides a fluid dispenser for two fluid-like products. The dispenser or container 11 or 51 includes a central partition wall or web 16 that divides the dispenser into two compartments. Although the embodiment of the '417 Patent illustrated in Figure 1 may provide for separately covering the mouth and the spout, the mouth and the spout do not abut and the spout does not have two covers as recited in claim 38. The embodiment of the '417 Patent illustrated in Figure 2 may have a mouth and a spout that abut one another, however, they are not separately sealed (single fitment/cap 57 covers both the spout and the mouth). In addition, the container of the '417 Patent is an integral container, and as such fails to disclose "assembling the first and second compartments to one another" as recited in independent claim 38. Therefore, the '422 Patent fails to anticipate the limitations of independent claim 38. As claims 44-46 depend from independent claim 38, claims 44-46 are also believed to be allowable over the '417 Patent as evidenced by the '422 Patent for the same patentably distinct reasons as described with respect to independent claim 38.

**Rejections Under 35 U.S.C. §103**

In the Final Office Action, the Examiner rejected claim 15 under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of Newarski, U.S. Patent No. 5,727,679 ("the '679 Patent"). Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of the '417 Patent. Claims 19-28, 32-34, and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of Ward, U.S. Patent No. 2,026,449 ("the '449 Patent") and Smith, U.S. Patent No. 2,170,311 ("the '311 Patent"). Claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of the '449 Patent and the '311 Patent, and further in view of the '064 Patent. Claim 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of the '449 Patent and the '311 Patent, and further in view of the '417 Patent. Claim 31 was rejected under

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35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of the '449 Patent, the '311 Patent, and further in view of the '679 Patent. Claims 35-37, 50, and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent. Finally, claims 41 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '289 Patent in view of the '679 Patent. These rejections are respectfully traversed.

**A. The Applicable Law**

The Examiner has the burden under 35 U.S.C. §103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Three criteria must be satisfied to establish a *prima facie* case of obviousness. First, the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would teach, suggest, or motivate one to modify a reference or to combine the teachings of multiple references. *Id.* Second, the prior art can be modified or combined only so long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Third, the prior art reference or combined prior art references must teach or suggest all of the claim limitations. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

In performing the obviousness inquiry under 35 U.S.C. §103, the Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990). The best defense against hindsight-based obviousness is to stringently require a showing of a teaching or motivation to combine the prior art references. *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371, 56 USPQ2d 1065, 1073 (Fed. Cir. 2000). The question of whether the requisite suggestion or motivation is present cannot be resolved on the basis of subjective belief, unknown authority, or general conclusions about what is "basic knowledge" or "common sense." *In re Lee*, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002). Rather, a decision as to whether multiple references can be combined "must be based on objective evidence of record." *Id.* Furthermore, the mere fact that knowledge *may* have been within the skill of an ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge. *Smiths Industries Medical*

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*Systems Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1421 (Fed. Cir. 1999).

**B. Rejection of Claim 14 over the '289 Patent in view of the '417 Patent**

Appellant submits that the invention of claim 14 is non-obvious over the '417 Patent. Claim 14 depends from independent claim 1. As described above, independent is not anticipated by the '417 Patent nor suggested by its disclosure. Accordingly, dependent claim 14 which incorporates the limitations of independent claim 1 also is not taught or otherwise suggested by the '417 Patent. Therefore, the '417 Patent fails to establish a *prima facie* obviousness of the container of dependent claim 14.

**C. Rejection of Claim 15 over the '289 Patent in view of the '679 Patent**

Appellant submits that the invention of claim 15 is non-obvious over the '289 Patent in view of the '679 Patent. Claim 15 depends from independent claim 1. As previously described, independent claim 1 is not anticipated by the '289 Patent nor suggested by its disclosure. The '679 Patent fails to alter this analysis. The '679 Patent fails to suggest a compartment which "tapers at an upper portion thereof to form a spout" and fails to suggest a spout and mouth having exterior sections with differing radii, two of the limitations of independent claim 1 not taught or disclosed by the '289 Patent. As such, dependent claim 15 is non-obvious over the '289 Patent in view of the '679 Patent.

**D. Rejection of Claims 19-21 and 49 over the '289 Patent in view of the '449 Patent and the '311 Patent**

Appellant submits that the invention of claim 19 is non-obvious over the '289 Patent in view of the '449 Patent and the '311 Patent. Claim 19 includes "a first compartment tapering at an upper portion thereof to form a spout." As described above with respect to claim 1, the '289 Patent fails to suggest modifying the container 10 to meet the limitations of claim 19, as such a modification would frustrate the reusable feature required by the teachings of the '289 Patent as cleaning the container 10 for future use would be impractical if the compartment itself tapered to form a spout rather than having a removable lid 14 form the opening. See Ex parte Thompson, 184 USPQ 558, 559 (Bd. App. 1974), wherein the Board held:



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“The appellant notes that the central theme of the Ericson disclosure is a ceiling grid with controlled ventilation which is obtained by slotting all of the runners and by providing in association therewith apertured slide plates. The appellant also notes that Ericson teaches that the slide plates be located on the ceiling side of the grid, that they be an integral part of the runner structure, i.e., not removable without breaking or at least disassembling the runner, and that the slide plates be moveable between fully opened and closed limit positions. It is the appellant’s position that it would not be obvious to substitute the non-apertured strips of Klein for the apertured slide plates of Ericson, since to do so would destroy the Ericson, apparatus for its intended purpose. We agree with the appellant’s position and, thus, we do not sustain the rejection of the appealed claims.” (emphasis added).

In addition, the only separate compartment embodiment taught by the ‘289 Patent does not include curved interior walls. In particular, Figure 4 of the ‘289 Patent depicts the one envisioned separate compartment design that includes a liquid container 50 and a dry container 52 (notably all other references to separable containers in the ‘289 Patent refer back to Figure 4 and its accompanying description). The interior wall(s) associated with these containers 50, 52 are not curved, and thus do not satisfy the convex and concave recitations of independent claim 19. Remaining embodiments of the ‘289 Patent provide an integrally formed cup 12, and not separately formed compartments. Thus, while the integral cup embodiments of the ‘289 Patent may teach a curved divider wall 17, the ‘289 Patent does not recognize, let alone teach, separate compartments with a curved spout and mouth, respectively. This failure by the ‘289 Patent is not surprising given a reliance upon a separate lid component to provide desired, regulated product flow. The focus of the one separate compartment embodiment of the ‘289 Patent is upon promoting “locking” interface between the containers 50, 52. *See, e.g., the ‘289 Patent, col. 5, lines 51 – 55.* The ‘289 Patent achieves this interlocking relationship by providing the linear, angled interior wall design of Figure 4. Notably, the ‘289 Patent cannot be viewed as suggesting a separate compartment configuration with curved interior walls. In particular, the ‘289 Patent specifically describes that the separate compartment design of Figure 4 readily promotes assembly by a consumer. Were the curved interior wall 17 of the integral container embodiments incorporated into the separate compartment design of Figure 4, a consumer would

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not be able to physically interlock the two compartments, especially in light of the fact that a consumer would not have access to an outer wrap-like material and/or glue needed to hold the two compartments together. “It is impermissible to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art” *Bausch & Lomb, Inc. v. Barnes-Hind Hydorcurve, Inc.*, 796 F.2d 443, 448 (Fed. Cir. 1986). Thus, modifying the embodiment of Figure 4 of the ‘289 Patent to include curved interior compartment walls would impermissibly render the resultant container unsatisfactory for its intended purpose, and a requisite suggestion to make such a modification does not exist.

For at least the above described reasons, the ‘289 Patent fails to teach or otherwise suggest the limitations of independent claim 19. The ‘449 Patent and the ‘311 Patent fail to alter this analysis. The ‘449 Patent relates to a drinking glass that maintains separate fluids and the glass terminates with two separate openings, neither of which tapers to form a spout for similar reasons as described with respect to the ‘289 Patent. Similarly, the ‘311 Patent relates to a bowl with dual (but not separate) compartments that also terminate with enlarged end openings. Therefore, for similar reasons as described with respect to the ‘289 Patent, the ‘311 Patent does not teach or otherwise suggest forming a spout. Therefore, none of the cited references teach or otherwise suggest the limitations of independent claim 19. As such, Appellant respectfully submits that the ‘289 Patent in view of the ‘449 Patent and the ‘311 Patent fail to establish *prima facie* obviousness for the container of claim 19. Claims 20, 21, and 49 depend from claim 19. Accordingly, for similar patentably distinct reasons as described with respect to independent claim 19, the ‘289 Patent in view of the ‘449 Patent and the ‘311 Patent fail to establish *prima facie* obviousness for the container of claims 20, 21, and 49.

**E. Rejection of claims 22-28 and 32-34 over the ‘289 Patent in view of the ‘449 Patent and the ‘311 Patent**

Appellant submits that the invention of independent claim 22 is non-obvious over the ‘289 Patent in view of the ‘449 Patent and the ‘311 Patent. Independent claim 22 relates to a portable, single-use container, which includes at least a first compartment, a second

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compartment, a first compartment opening for dispensing a product from the first compartment, and a second compartment opening for dispensing a second consumable product from the second compartment. The first and second compartments are secured in a side-by-side fashion and combine to form a body of the container. The first compartment opening has a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment. The second compartment opening includes a concave section and has a transverse cross-sectional area less than a maximum transverse cross-sectional area of the second compartment. The transverse cross-sectional area of the second compartment opening is greater than the transverse cross-sectional area of the first compartment opening. In addition, at least one of the first and second compartment openings is substantially centered relative to the body. None of the cited references teach these limitations.

The '289 Patent, as referenced by the Examiner, has dry food compartment 16 and liquid compartment 18. A divider wall 17 defines the transverse cross-section of each compartment 16 and 18 and their respective openings. In the illustrated embodiments, the divider wall 17 is concave relative to the opening of liquid compartment 18 and convex relative to the opening of dry food compartment 16. Furthermore, the opening of the dry food compartment 16 has a larger cross-sectional area than the opening of the liquid compartment 18. This is in direct contrast to the limitations of claim 22, which requires the second compartment opening, which is larger than the first compartment opening, to include a concave section.

In addition, the '289 Patent fails to suggest modification of its design to reverse the concave and convex nature of divider wall 17. The '289 Patent desires the dry food compartment 16 to be as large as possible as it must accommodate relatively large and rigid food particles that are not able to fit within smaller spaces, such as those created within the liquid food compartment 18 where the divider wall 17 meets the cup wall 22, as well as liquid mediums. Reversing the divider wall 17 to define a concave section along the food compartment would reduce its overall size, in direct contrast to the stated goals of the '289 Patent. One of ordinary skill in the art would only appreciate the desirability of a second compartment opening including a transverse concave section upon access to the disclosure in the Application in issue. As such,

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it is respectfully submitted that the Examiner is using the disclosure of the Application in issue as a roadmap to provide the necessary motivation to combine the cited references, which is impermissible hindsight. As such, none of the cited references teach or otherwise suggest the limitations of independent claim 22.

For at least the above described reasons, Appellant respectfully submits the '289 Patent in view of the '449 and '311 Patents fail to establish *prima facie* obviousness of the container of claim 22. Each of claims 23-28 and 32-34 depend from independent claim 22. Appellant believes independent claim 22 to be non-obvious over the cited references. Therefore, for the same reasons as described with respect to claim 22, the '289 Patent in view of the '449 and the '311 Patents also fail to establish *prima facie* obviousness of the containers of claims 23-28 and 32-34.

Claim 27 includes the further patentably distinct limitation that "the first compartment includes an integrally formed spout defining the first compartment opening." As described above, the compartments of '289 Patent terminate in relatively large openings which fail to form a "spout" as defined by its ordinary meaning. Furthermore, the '289 Patent teaches away from integrally forming a spout with the first compartment as the '289 Patent provides a reusable container. The '289 Patent allows for modifications to the shape and design "to provide a surface which is easier to clean" *See the '289 Patent, column 6, lines 26-31*. However, integrally forming the first compartment with the spout will make the first compartment difficult, if not nearly impossible, to clean and, therefore, is in direct contrast with the reusable teachings of the '289 Patent. Moreover, as described above, the '449 Patent and the '311 Patent also fail to provide for formation of a spout to define a first compartment opening. For these additional reasons, the '289 Patent in view of the '449 and the '311 Patents fail to establish *prima facie* obviousness of the container of claim 27 or claim 28, which directly depends from claim 27.

**F. Rejection of Claim 29 over the '289 Patent in view of the '449 Patent, the '311 Patent, and the '064 Patent**

Claim 29 depends from directly depends from claim 27 and indirectly depends from independent claim 22. As previously described, claims 22 and 27 are not taught or otherwise

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suggested by the '289 Patent in view of the '489 Patent and the '311 Patent. Addition of the '064 Patent fails to alter this analysis. As described above, the '289 Patent teaches away from integrally forming the first compartment with the spouts as it will make the first compartment to clean and is in direct contrast with the reasonable teachings of the '289 Patent. In addition, the '289 Patent fails to suggest modification of its design to reverse the concave and convex nature divider wall 17, as fully described above. Addition of the '064 Patent fails to remedy these deficiencies with the obviousness rejections of claims 22 and 27. As such, the obviousness rejection over dependent claim 29 is similarly flawed. Therefore, Appellant respectfully submits that the '289 Patent in view of the '449 Patent, the '311 Patent, and the '064 Patent fails to establish *prima facie* obviousness for the method of claim 29.

**G. Rejection of Claim 30 over the '289 Patent in view of the '449 Patent, the '311 Patent, and the '417 Patent**

Claim 30 depends from depends from independent claim 22. As previously described, claim 22 is not taught or otherwise suggested by the '289 Patent in view of the '489 Patent and the '311 Patent. Addition of the '417 Patent fails to alter this analysis. As fully described above, the '289 Patent fails to suggest modification of its design to reverse the concave and convex nature divider wall 17. Addition of the '417 Patent fails to remedy this deficiency with the obviousness rejections of claim 22. As such, the obviousness rejection over dependent claim 30 is similarly flawed. Therefore, Appellant respectfully submits that the '289 Patent in view of the '449 Patent, the '311 Patent, and the '417 Patent fails to establish *prima facie* obviousness for the method of claim 30.

**H. Rejection of Claim 31 over the '289 Patent in view of the '449 Patent, the '311 Patent, and the '679 Patent**

Claim 31 depends from depends from independent claim 22. As previously described, claim 22 is not taught or otherwise suggested by the '289 Patent in view of the '489 Patent and the '311 Patent. Addition of the '679 Patent fails to alter this analysis. The '289 Patent fails to suggest design modification to reverse the concave and convex nature divider wall 17, as described above. Addition of the '679 Patent fails to remedy this deficiency with the

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obviousness rejections of claim 22. Therefore, Appellant respectfully submits that the '289 Patent in view of the '449 Patent, the '311 Patent, and the '679 Patent fails to establish *prima facie* obviousness for the method of claim 30 for similar reasons as described with respect to independent claim 22.

**I. Rejection of claims 35-37, 50, and 51 over the '289 Patent.**

Appellant submits that the invention of independent claim 35 is non-obvious over the '289 Patent. Claim 35 relates to a portable, packaged good article including a first compartment, a first consumable product contained within the first compartment, a second compartment secured to the first compartment in a side-by-side fashion, and a second consumable product contained within the second compartment. The packaged good article of claim 35 further includes a first compartment opening for dispensing the first consumable product from the first compartment and a second compartment opening for dispensing the second consumable product from the second compartment. The first compartment opening has a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment. The second compartment opening has a transverse cross-sectional area less than a maximum transverse cross-sectional area of the second compartment and at least three times greater than the transverse cross-sectional area of the first compartment opening. At least one of the first and second compartment openings is substantially centered relative to the container body. The '289 Patent fails to render claim 35 obvious.

The Examiner cited Figure 6 of the '289 Patent as teaching the limitations of claim 35. However, the openings of compartments 86 and 88 are at the top of the respective compartments and are an integral part of divided cup 82. The openings of the compartments 86 and 88 are similar in transverse cross-sectional area to the compartments 86 and 88 themselves, so that "the first opening having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment" and "the second opening having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the second compartment" of claim 35 are not taught by the '289 Patent. The '289 Patent instead requires an additional lid 84 to be added to the container to control product dispersion as described above. Also as

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described above, the '289 Patent further teaches away from forming smaller openings by the actual compartments 86 and 88 as it would render the compartments 86 and 88 virtually impossible to clean in contrast to the container's reusable purpose. Furthermore, neither of these compartment openings are substantially centered relative to the divider cup 82. As such, Appellant respectfully submits that the '289 Patent fails to establish *prima facie* obviousness for the container of independent claim 35. In addition, for the same patentably distinct reasons, claims 36, 37, 50 and 51 are also allowable over the '289 Patent.

**J. Rejection of Claims 41 and 43 over the '289 Patent in view of the '670 Patent**

Appellant submits that the invention of claims 41 and 43 are non-obvious over the '289 Patent in view of the '679 Patent. Both claims 41 and 43 depend from independent claim 38. As previously described independent claim 38 is not taught or otherwise suggested by the '289 Patent. The '679 Patent fails to alter this analysis. The '679 Patent fails to suggest compartments which taper at an upper portion thereof to form a spout or mouth, covering the spout separate of the mouth, or covering the mouth and seal, which separately covers the spout, with a cover, three of the limitations of independent claim 38 not taught or suggested by the '289 Patent. As such, these limitations are non-obvious over the '289 Patent in view of the '679 Patent.

In addition, claim 41 includes the additional step of "aseptically sterilizing the first compartment before dispensing the first consumable product," and claim 43 requires the first consumable product to be milk and dispensing to occur in an aseptically sterilized environment. The '289 Patent in view of the '679 Patent fails to teach or suggest an aseptically sterilized first compartment or dispensing environment. As cited by the Examiner, the '289 Patent teaches a reusable container in which the step of dispensing a first consumable product into the first container is performed by the consumer at home. *See the '289 Patent, column 4, lines 53-67; Final Office Action mailed 11/06/02, page 15.* A consumer's home or kitchen is not an aseptically sterilized environment, and a consumer merely pours milk from the carton into the container without aseptically sterilizing the compartment 18. To require a consumer to provide an aseptically sterilized environment or to aseptically sterilize the compartment 18 is in direct

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contrast with the purpose of the '289 Patent to provide a "convenient and easy to use and clean" food container. Accordingly, the '289 Patent does not suggest modifying the container 10 to require aseptic sterilization of the compartment or the environment. Rather, the '289 Patent teaches away from such modification. For at least the above described reasons, Appellant respectfully submits that the '289 Patent in view of the '679 Patent fails to establish *prima facie* obviousness for the container of claims 41 and 43.

**CONCLUSION**

For the above reasons, Appellant respectfully submits that the cited art neither anticipates nor renders the claimed invention obvious, and therefore that the claimed invention does patentably distinguish over the cited art. Therefore, Appellant respectfully submits that the above rejections to pending claims 1-51 must be withdrawn and that these claims be allowed.



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Respectfully submitted,

John Rebhorn et al.,

By their attorneys,

DICKE, BILLIG & CZAJA, PLLC

Fifth Street Towers, Suite 2250

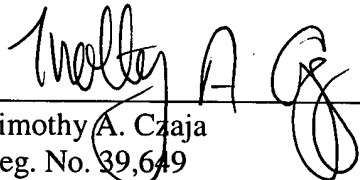
100 South Fifth Street

Minneapolis, MN 55402

Telephone: (612) 573-2004

Facsimile: (612) 573-2005

Dated: MAY 27, 2003  
TAC:jms:mad

  
\_\_\_\_\_  
Timothy A. Czaja  
Reg. No. 39,649

**CERTIFICATE UNDER 37 C.F.R. 1.8:** The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27<sup>th</sup> day of May, 2003.

By   
Name: Timothy A. Czaja

## **APPENDIX A**

### **U.S. Patent Application**

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Serial No.: 09/781,582  
Filed: February 12, 2001  
Entitled: PORTABLE, SIDE-BY-SIDE COMPARTMENT CONTAINER AND  
METHOD FOR SEPARATELY STORING AND DISPENSING TWO  
CONSUMABLE PRODUCTS, ESPECIALLY CEREAL AND MILK  
Docket No.: G180.137.101

### **PRESENTLY PENDING CLAIMS**

1. A portable, single-use container for separately containing a first and a second consumable product, the container comprising:
  - a first compartment for containing a first consumable product, the first compartment tapering at an upper portion thereof to form a spout forming a passage along a spout internal surface; and
  - a second compartment for containing a second consumable product, the second compartment tapering at an upper portion thereof to form a mouth forming an opening along a mouth internal surface;wherein the first and second compartments are assembled to one another in a side-by-side fashion such that the mouth abuts the spout, and further wherein upon final assembly, the spout and mouth are positioned such that each of the respective internal surfaces define an interior section and an exterior section, the exterior section of the spout internal surface having a radius differing from a radius of the exterior section of the mouth internal surface.
2. The container of claim 1, wherein the first and second compartments each include a body portion having an exterior surface and an interior surface, the interior surfaces abutting each other upon final assembly.
3. The container of claim 2, wherein the respective interior surfaces are relatively planar.

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4. The container of claim 1, wherein the first compartment includes a body portion, a neck, and the spout, the neck tapering in outer dimension from the body portion to the spout.
5. The container of claim 4, wherein the body portion of the first compartment defines an interior surface and an exterior surface, and further wherein the spout is substantially transversely aligned with the interior surface and substantially transversely offset from the exterior surface.
6. The container of claim 4, wherein the exterior surface of the first compartment body portion is arcuate in transverse cross-section, defining a maximum diameter, the spout being substantially centered relative to the maximum diameter.
7. The container of claim 1, wherein the second compartment includes a body portion, a neck, and the mouth, the neck tapering in outer dimension from the body portion to the mouth.
8. The container of claim 7, wherein the body portion of the second compartment defines an interior surface and an exterior surface, and further wherein the mouth is substantially transversely aligned with the interior surface and substantially transversely offset from the exterior surface.
9. The container of claim 7, wherein the exterior surface of the second compartment body portion is arcuate in transverse cross-section, defining a maximum diameter, the mouth being substantially transversely centered relative to the maximum diameter.
10. The container of claim 1, wherein the mouth is configured to wrap about a portion of the spout upon final assembly.

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Filed: February 12, 2001

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11. The container of claim 10, wherein a portion of the mouth is concave in transverse cross-section for wrapping about a portion of the spout.
12. The container of claim 11, wherein a portion of the spout is convex in transverse cross-section, corresponding with the concave portion of the mouth.
13. The container of claim 1, wherein upon final assembly, respective bottoms of the first and second compartments are substantially aligned, and the spout extends to a height less than a height of the mouth.
14. The container of claim 1, further comprising:  
a film wrapped about the first and second compartments to secure the first compartment to the second compartment.
15. The container of claim 1, further comprising:  
a membrane secured across the passage defined by the spout to seal the first compartment.
16. The container of claim 1, further comprising:  
a cap selectively secured to the mouth.
17. The container of claim 16, wherein the cap selectively encompasses the mouth and the spout.
18. The container of claim 1, wherein the first compartment contains milk and the second compartment contains cereal.
19. A portable, single-use packaged good article comprising:

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a first compartment tapering at an upper portion thereof to form a spout having a curved, convex interior wall;

a first consumable product contained within the first compartment;

a second compartment formed separate of the first compartment and tapering at an upper portion thereof to form a mouth having a curved, concave interior wall;

a second consumable product contained within the second compartment;

wherein the first and second compartments are assembled to one another in a side-by-side fashion such that the mouth abuts the spout, the first consumable product being contained separate from the second consumable product.

20. The packaged good article of claim 19, wherein the first consumable product is a liquid consumable product and the second consumable product is a dry consumable product.

21. The packaged good article of claim 20, wherein the liquid consumable product is milk and the dry consumable product is cereal.

22. A portable, single-use container for separately containing a first and a second consumable product, the container comprising:

a first compartment for containing a first consumable product;

a second compartment for containing a second consumable product, the first and second compartments being secured to one another in a side-by-side fashion and combining to define a body of the container;

a first compartment opening for dispensing a first consumable product from the first compartment, the first compartment opening having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the first compartment; and

a second compartment opening for dispensing a second consumable product from the second compartment, the second compartment opening including a transverse

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concave section and having a transverse cross-sectional area less than a maximum transverse cross-sectional area of the second compartment, the transverse cross-sectional area of the second compartment opening being greater than the transverse cross-sectional area of the first compartment opening;

wherein at least one of the first and second compartment openings is substantially centered relative to the body.

23. The container of claim 22, wherein the first and second compartment openings are positioned side-by-side upon final assembly to define a pour region for the container, the pour region having a central axis substantially aligned with a central axis of the body.

24. The container of claim 23, wherein the body and the pour region are substantially circular in transverse cross-section.

25. The container of claim 22, wherein the first and second compartment openings are defined by respective side walls configured such that a portion of the second compartment opening side wall wraps about a portion of the first compartment opening side wall.

26. The container of claim 25, wherein the concave section is configured to receive a corresponding convex section of the first compartment opening side wall.

27. The container of claim 22, wherein the first compartment includes an integrally formed spout defining the first compartment opening.

28. The container of claim 27, wherein the second compartment includes an integrally formed mouth defining the second compartment opening.

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29. The container of claim 28, wherein upon final assembly, respective bottoms of the first and second compartments are substantially aligned, and the spout extends to a height less than a height of the mouth.
30. The container of claim 22, further comprising:  
a film wrapped about the first and second compartments to secure the first compartment to the second compartment.
31. The container of claim 22, further comprising:  
a film secured across the first compartment opening for sealing the first compartment.
32. The container of claim 22, further comprising:  
a cap selectively secured over the second compartment opening.
33. The container of claim 32, wherein the cap selectively encompasses the first and second compartment openings.
34. The container of claim 22, wherein the first compartment contains milk and the second compartment contains cereal.
35. A portable, single-use packaged good article comprising:  
a first compartment;  
a first consumable product contained within the first compartment;  
a second compartment secured to the first compartment in side-by-side fashion, the first and second compartments combining to define a container body;  
a second consumable product contained within the second compartment;  
a first compartment opening for dispensing the first consumable product from the first compartment, the first compartment opening having a transverse cross-sectional

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area less than a maximum transverse cross-sectional area of the first compartment; and

a second compartment opening for dispensing the second consumable product from the second compartment, the second compartment opening having a transverse cross-sectional area less than a maximum transverse cross-sectional of the second compartment, the transverse cross-sectional area of the second compartment opening being at least three times greater than the transverse cross-sectional area of the first compartment opening;

wherein at least one of the first and second compartment openings is substantially centered relative to the container body.

36 The packaged good article of claim 35, wherein the first consumable product is a liquid consumable product and the second consumable product is a dry consumable product.

37. The packaged good article of claim 36, wherein the liquid consumable product is milk and the dry consumable product is cereal.

38. A method of manufacturing a portable, single-use container separately containing two consumable products, the method comprising:

providing a first compartment tapering at an upper portion thereof to form a spout;

providing a second compartment tapering at an upper portion thereof to form a mouth,  
the first and second compartment being configured for assembly to one another in  
a side-by-side fashion;

dispensing a first consumable product into the first compartment;

covering the spout separate of the mouth with a seal that seals the first consumable  
product within the first compartment;

dispensing a second consumable product into the second compartment;

assembling the first and second compartments to one another; and



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covering the mouth and the seal with a cover;

wherein upon final assembly, the mouth abuts the spout.

39. The method of claim 38, wherein the second compartment is assembled to the first compartment before dispensing the second consumable product.

40. The method of claim 38, wherein the second compartment is assembled to the first compartment after dispensing the second consumable product.

41. The method of claim 38, further comprising:  
aseptically sterilizing the first compartment before dispensing the first consumable product.

42. The method of claim 38, wherein the first consumable product is a liquid consumable product and the second consumable product is a dry consumable product.

43. The method of claim 42, wherein the liquid consumable product is milk and further wherein dispensing milk occurs in an aseptically sterilized environment.

44. The method of claim 38, wherein assembly of the first and second compartments includes:

wrapping a shrink label about the first and second compartments.

45. The method of claim 38, wherein covering the second compartment includes selectively securing a cap over the mouth and the spout.

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46. The method of claim 38, wherein the spout and the mouth combine to define a pour region, and further wherein assembling the first and second compartments includes substantially centering the pour region relative to a remainder of the container.

47. The container of claim 1, wherein the radius of the exterior section of the spout internal surface is less than the radius of the exterior section of the mouth internal surface.

48. The container of claim 16, wherein the mouth defines an opening, and further wherein the container is adapted to require complete removal of the cap from the mouth to expose the opening.

49. The container of claim 19, wherein the spout defines a circle in transverse cross-section and the mouth defines a non-circle in transverse cross-section.

50. The container of claim 35, wherein the transverse cross-sectional area of the second compartment opening is at least four times greater than the transverse cross-sectional area of the first compartment opening.

51. The container of claim 50, wherein the transverse cross-sectional area of the second compartment opening is at least five times greater than the transverse cross-sectional area of the first compartment opening.

# Appendix B

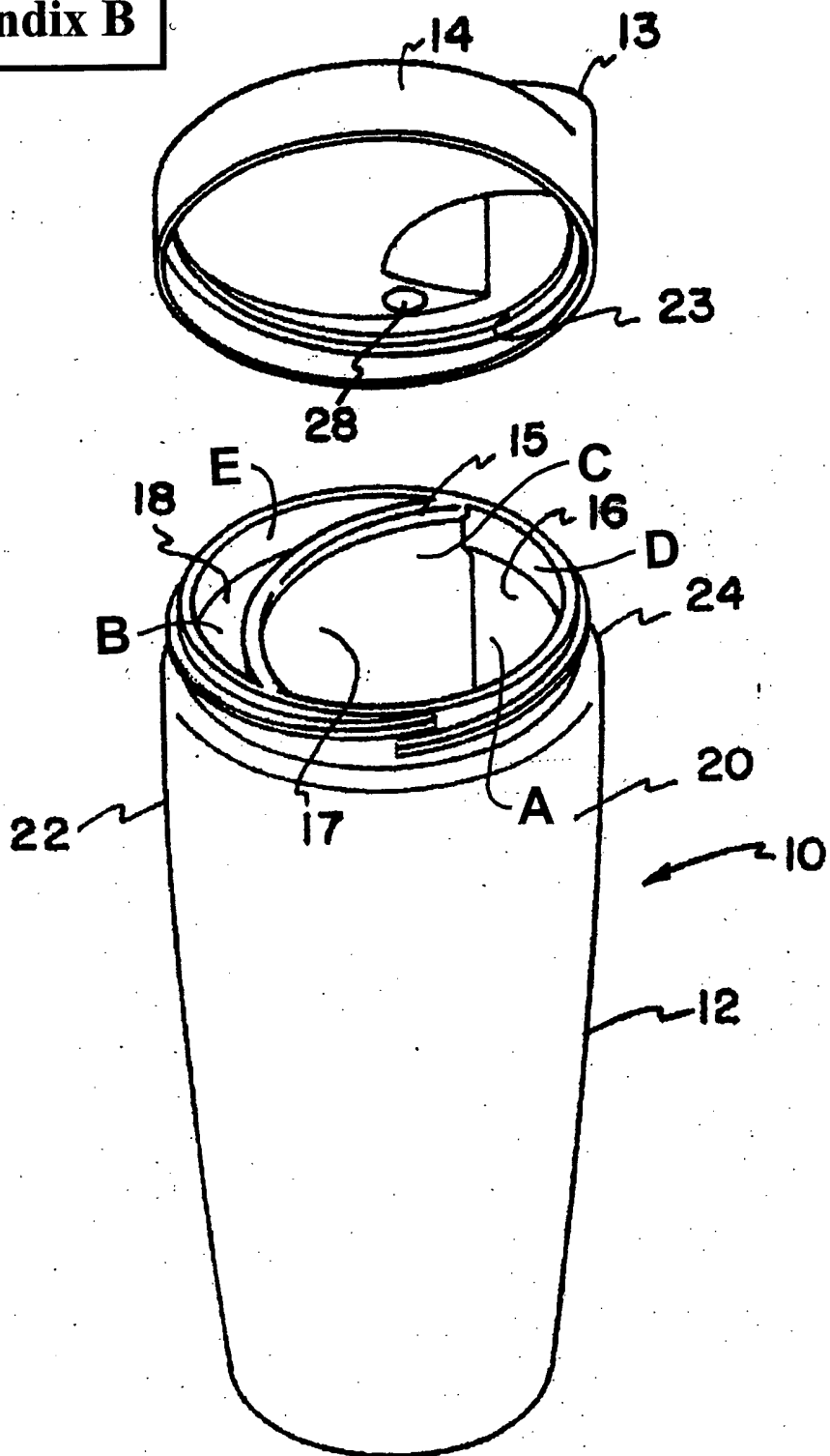


FIG. 3